BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>SCOTT M.<br><br>Claimant,<br><br>vs.<br><br>NORTH BAY REGIONAL CENTER,<br><br>Service Agency. | OAH Case No. 2011060732 |

**DECISION**

Administrative Law Judge Perry O. Johnson, Office of Administrative Hearings, State of California, heard this matter at the North Bay Regional Center in Napa, California, on August 2, 2011.

Claimant's mother, Ms. Nancy W., represented Scott M. (claimant).[1]

Attorney Nancy Ryan represented North Bay Regional Center (NBRC or the service agency.)

On August 2, 2011, the parties submitted the matter and the record closed.

ISSUE

Is the service agency obligated to fund the cost of sedation dentistry treatment for claimant?

[1] Claimant and his family are referred to by their initials or family title in order to protect their confidentiality.

## FACTUAL FINDINGS

*Parties & Jurisdiction*

1. Claimant is a 42-year-old man, who was born on May 9, 1969. He is eligible for regional center services by reason of diagnoses of Autism and severe mental retardation. Also claimant has a form of psychosis that impacts the Autism diagnosis. He is further impaired by a seizure disorder.

2. Claimant appeals the service agency's denial of his request to fund the cost of a sedation dental treatment plan, which has an estimated cost of more than $2,500. Claimant contends that he has an entitlement to the proposed dental treatment because the service agency funded claimant's prior routine dental services in approximately August 2007. Further claimant asserts that he is now enrolled in Kaiser Permanente Health Plan, which does not pay for dental care services, and hence he is without financial means to pay for the essential dental treatment.

3. The service agency gave written notice of its proposed action denying claimant's request in a form titled "Notice of Proposed Action," dated May 16, 2011. The service agency declined to fund sedation dentistry for claimant on the ground that the dental care may be fundable by a generic resource, namely a health insurance plan called Partnership Advantage, which covers the costs of dental treatment, and to which claimant was enrolled before August 2010.

4. Claimant filed a "Fair Hearing Request" form, dated June 14, 2011, appealing the service agency's denial and requesting a hearing. The matter proceeded to hearing on August 2, 2011.

*Claimant's Background Information*

5. Claimant's mother is a strong advocate for claimant's care, housing and general welfare. She is aware of developments in claimant's life and she seeks to be mindful of his essential medical and dental needs.

6. Claimant resides at Dana's Care Home in Suisun, California. He has lived at the home for approximately six years. The service agency funds claimant's residence at the 4F home. Claimant receives SSI stipends and Medicare and MediCal provide funds for respondent medical and psychiatric treatment.

7. The service agency provides funds to pay for "board and care" through Dana's Care Home. Also the service agency pays for respondent to receive psychiatric consultation with Dr. Chadwin, who treats claimant on a monthly basis. Medical and Medicare are available to pay for claimant's medical and dental care.

8. The Individual Program Plan (IPP), dated July 24, 2008, developed for claimant includes under the "Kinds of Support Needed" section, among other things, that "MediCal will continue to fund medical and dental coverage."

*Service Agency's Evidence*

9 Ms. Mel Zago has been claimant's case manager for approximately five years. She has been directly involved with the service agency's provision of services to claimant over that period of time expect for the three-month span from October 2010 to January 2011, when she took maternity leave. However, in her absence all matters pertaining to claimant were recorded by other case managers in files of the service agency.

On approximately February 19, 2010, Ms. Zago made a note in the service agency's files for claimant that the service agency's dental coordinator was seeking to arrange dental treatment for claimant. Ms. Zago understood that the service agency would not be obligated to pay for the dental treatment because claimant was eligible for MediCare and that he was enrolled in plan called Partnership Advantage which provided funding for dental treatment.

Ms. Zago was credible when she asserted at the hearing of this matter that the service agency's records for claimant reflected that no communication regarding claimant's pursuit of dental treatment was made until March 2011 following the February 2010 preliminary request. At that time in March 2011, Ms. Zago learned that claimant had ended his enrollment in Partnership Advantage and that he had joined Partnership, which allowed him to become a member of the Kaiser Permanente medical insurance plan. But with that change of medical insurance plans, claimant was no longer able to receive dental coverage. Ms. Zago then consulted with the case management supervisor to make a determination regarding claimant's request that service agency pay for his dental care needs.

10. Mr. Thomas Nixon is the service agency's case management supervisor who has had involvement with claimant's case.

Mr. Nixon provided persuasive evidence regarding health insurance coverage in the instance of claimant, who is a resident of Solano County. Mr. Nixon is familiar with the practice of Solano County providing MediCal health insurance to eligible adult consumers of the service agency. Solano County contracts with a private business called Partnership, which functions similarly to an HMO. Partnership manages the provision of health care to MediCal recipients in Solano County.

The Partnership Advantage program is an enhanced program that serves persons who are entitled to both MediCal and MediCare. That program pays for both dental and medical costs of an eligible person.

In 2009, MediCal stopped paying for dental coverage due the State of California government's financial difficulties.

In February 2010, when the service agency's dental coordinator began the process of referring claimant. to undergo dental treatment, claimant was enrolled in Partnership Advantage. At the current time, claimant participates in the Partnership plan that enables him to receive medical care through the Kaiser Permanente hospital system. But Partnership does not cover the cost of dental treatment.

Mr. Nixon along with Ms. Zago explored the prospect of the service agency providing funds to pay for sedation dentistry for claimant. However, the case management supervisor reasonably concluded that Partnership Advantage is a medical/dental health insurance plan to which claimant is entitled to enroll. Because of the availability of the dental health insurance plan being a generic resource, a reasonable conclusion was reached by Mr. Nixon that service agency is precluded from expending money to pay for sedation dentistry for claimant.

Mr. Nixon pointed out that an eligible person may file an application to transfer between the respective programs called Partnership and Partnership Advantage. The transfer entails only the filing of an application form. But, there may be a period of time over which claimant may not be able to return to the Kaiser Permanante medical care system.

*Claimant's Evidence*

11. Claimant's mother delivered a poignant statement, which included the following:

> As of August 1, 2010, I enrolled [claimant] in Kaiser . . . Advantage Health Plan in an effort to correct . . . intolerable medical inadequacy . . . . In April 2010, following a week-long hospitalization, a medical clearance was required for [claimant] to resume programming at IMPAC. [Claimant's treating physician] refused to provide this clearance. A few month later [claimant] developed an urinary tract infection; and, despite being in great pain and [being] incontinent his medical need[s] were again ignored by his attending physician. During all [physician] visits, [claimant] was made to wait for hours at a time, which resulted in extreme agitation (repeated slapping of his own face) and a potential danger to all present. After attempting to obtain another physician; but, finding no one who [would] accept his MediCal/MediCare insurance I enrolled him in Kaiser. [Claimant] now is receiving prompt and competent medical attention . . . .
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> Unfortunately, [claimant's] dental care has been neglected. He continues to have dental pain and is unconscionably over due for dental treatment. All attempts to have [service agency]: Mel Zago, CPC, and Tom Nixon, Case Management Supervisor, [to] pay for treatment have met with a resounding "no." [Claimant] has not received dental care since August of 2007. I find this fact

unacceptable; and, request that a judgment be rendered that [service agency] financially support [claimant's] total health needs.

12. Claimant's mother asserted that she has not caused claimant to be re-enrolled in Partnership Advantage because such act would prompt Kaiser Permanente to stop its relationship as medical facility to which claimant could receive his primary medical care. And should claimant turn to Partnership Advantage for the sole purpose of acquiring dental care and then should he attempt to return to the Partnership plan in order to receive Kaiser coverage, claimant might be barred from returning to Kaiser because of the medical treatment provide having reached a maximum number of MediCare and MediCal enrollees.

13. Despite the compelling nature of claimant's mother's rationale, claimant's evidence does not overcome the reasonable determination of the service agency's personnel regarding the availability of a generic resource that is able to fund the provision of sedation dentistry for claimant. And service agency never received a complaint from claimant's mother regarding the alleged past bad medical treatment given claimant so that service agency could have investigated the matter and then advocated on behalf of claimant.

*Controlling Statutory Directives Regarding Generic Resources*

14. The Lanterman Act places an obligation on regional centers to operate in a cost-effective[2] manner.

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[2] Welfare and Institutions Code section 44648 provides, in part:

Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

Welfare and Institutions Code section 4659 provides in part:

(a) Except as otherwise provided . . . the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following;

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the civilian Health and Medical Program for Uniformed Services, school districts, and federal supplemental security income and the state supplementary program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer . . . .

[¶] . . . [¶]

15. The service agency is mandated to explore all generic resources and to utilize such generic resources where those types of services are available. Generic resources refer to the source of funding and do not refer to the particular nature of the service provided to a consumer.

16. Partnership Advantage, to which claimant is entitled to enroll, is a generic resource that has provided dental coverage for claimant. And there is no legal obstacle for claimant to return to Partnership Advantage in order to obtain required dental care.

*Other Factual Matter*

17. Claimant did not establish that he has a dental disorder that requires sedation dentistry that is associated with a neurological impairment that results in a need for treatment of Autism or a condition similar to that required for mental retardation.

## LEGAL CONCLUSIONS

*Jurisdiction and Burden of Proof for this Appeal*

1. The Lanterman Developmental Disabilities Act (Lanterman Act) governs this controversy. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

2. Where a claimant seeks to establish the propriety of a service not previously agreed to by the service agency, the burden is on that appealing claimant to demonstrate the service agency's decision is incorrect. In this case, claimant has the burden of proof. Claimant did not meet his burden.

*Specialized Dental Care Must Be Connected to a Developmental Disability*

3. The services and supports the Lanterman Act requires service agencies provide for persons with developmental disabilities are, *inter alia*, those:

> [S]pecialized services and supports or special adaptations of generic services and supports *directed toward the alleviation of a developmental disability* or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance

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(c) This section shall not be construed to impose any additional liability on the parents of children with developmental disabilities, or to restrict eligibility for, or deny services to, any individual who qualifies for regional center services but is unable to pay . . . "

> of independent, productive, normal lives . . . [and] those listed in the individual program plan may include, but are not limited to, . . . *specialized medical and dental care* . . . . (Welf. & Inst. Code, § 4512, subd. (b).)
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> (Emphasis added.)

Thus to receive funding for dental service and support, claimant must show both a "specialized" need and a nexus to his developmental disability.

4. The above requirement is reinforced by the following regulation interpreting the Lanterman Act to not require service agency funding for problems solely physical in nature:

> Developmental Disability shall not include handicapping conditions that are: . . . (3) Solely physical in nature. These conditions include congenital anomalies *or conditions, acquired through disease,* accident, or faulty development, *which are not associated with a neurological impairment* that results in a need for treatment similar to that required for mental retardation. (Cal. Code of Regs., tit. 17, § 54000, subd. (c)(3).)

5. In this case, claimant did not show entitlement to funding for the requested sedation dental service through service agency. It was not established that claimant's dental ailment was caused, connected to, or exacerbated by claimant's developmental disability. The evidence regarding the service agency's prior funding of past dental services for claimant does not support claimant's position that the service agency fund specialized sedation dentistry. Even if those services were erroneously provided, that fact alone would not justify providing the services requested here absent a connection to a developmental disability.

This determination does not stand for the proposition that future dental services cannot be funded by the service agency. It may be that a particular dental service will be caused or exacerbated by claimant's developmental disability. In fact, the service agency apparently agrees because it previously funded dental services when it believed such a connection existed. There was simply no showing of this connection in this case.

*Generic Resources Must Also Be Exhausted*

6. Regardless of entitlement to services and support, a service agency is precluded from using its funds to provide the requisite services and support, if in so doing it would supplant the budget of any other agency, which has a legal responsibility to serve all members of the general public, and is receiving public funds for providing those services. (Welf. & Inst. Code, § 4648, subd. (a)(8).) The service agency is thus required to investigate, identify and pursue all possible sources of funding for its consumers for other generic resources, such as Medi-Cal, Medicare, and other agencies. (Welf. & Inst. Code, §§ 4652 and 4659, subd. (a)(1).)

In this matter, claimant is eligible for MediCal and MediCare. In the county where he resides he has been enrolled in a plan called Partnership Advantage that attends to MediCal and MediCare patients. Through Partnership Advantage, claimant has been eligible for dental care and treatment. Partnership Advantage is a generic resource to which claimant may seek coverage for his dental care needs.

It must be determined that claimant has not exhausted generic resource funding for the routine or specialized dental work. Service agency is unable to meet claimant's request for funding of sedation dentistry treatment for him.

ORDER

Claimant Scott M.'s appeal of the North Bay Regional Center's determination is denied.

DATED: August 10, 2011

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PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

**NOTICE**

**This is the final administrative decision pursuant to Welfare and Institutions Code section 4712.5 subdivision (b)(2). Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**